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SUPREME COURT, U.S.

In The  
SUPREME COURT OF THE UNITED STATES  
October Term, 1982  
No. 82-

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LEO EDWARDS,

Petitioner,

-vs.-

STATE OF MISSISSIPPI,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF MISSISSIPPI

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#### THE QUESTION PRESENTED FOR REVIEW

Whether, in this capital case, a prospective juror was improperly excused for cause because of her scruples concerning imposition of the death penalty, notwithstanding her assertion that she would "fairly consider all of the penalties which the law has provided."

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Mississippi entered in this case on April 14, 1982.

OPINION BELOW

The decision of the Supreme Court of Mississippi is not reported. It is set-out in the Appendix, infra.

JURISDICTION

The judgment of the Supreme Court of Mississippi affirming petitioner's conviction and death sentence was entered on April 14, 1982. A timely motion for rehearing was denied on May 26, 1982. On July 16, 1982 Mr. Justice White extended the time within which to file this petition for certiorari to and including August 24, 1982.



STATEMENT OF THE CASE

Petitioner was convicted on April 3, 1981 of the crime of murder while engaged in the commission of robbery under Miss. Code Ann. §97-3-19(2)(e) (Supp. 1981), and he was sentenced to death. The Supreme Court of Mississippi affirmed the conviction and sentence.

The facts as they relate to the exclusion for cause of a juror, Ms. Pamela Hibler, because of her expressed scruples concerning the death penalty are as follows:

BY THE COURT:

I want you to listen closely to the questions that will be asked you in this regard and consider very carefully. Do any of you have any conscientious scruples against the infliction of the death penalty when the law authorizes it and in proper cases and where the testimony warrants it? Do each of you understand the question that I asked?

(Jurors nodding heads)

BY THE COURT:

Do any of you have any conscientious scruples under those circumstances?

(Jurors raising hands)

BY THE COURT:

Okay. If you will, we will just take them one at a time and, if you would, state your name first.

\*\*\*\*\*

BY THE COURT:

I want you to listen to it closely again, especially all of those who raised your hands. Just listen closely to the question again. Do you have any conscientious scruples against the death penalty when the law authorizes it in proper cases and where the testimony warrants it? Now, do you understand?

\*\*\*\*\*

BY THE COURT:

Thank you. And the next one is Pamela Hibler. Is that right?

BY MS. HIBLER:

Yes, sir.

BY THE COURT:

Okay.

BY MS. HIBLER:

I just don't think I could be a juror to decide on a person.

BY THE COURT:

That's what I was afraid of. I was afraid that you and Ms. Hopkins both might be misunderstanding my question. It's not a question of whether you could make the decision. It's a question of whether you have conscientious scruples about --

BY MS. HIBLER:

I have conscientious scruples and religious belief also.

BY THE COURT:

Thank you. Is there anyone else up here?

(Juror raising hand)

\* \* \* \* \*

BY THE COURT:

Now, to each of you who raised your hand, I want you to listen to the next question. Even though you may have conscientious scruples against the infliction of the death penalty, I ask you whether or not you could follow the testimony and the instructions of the Court and return a verdict of guilty although that verdict could result in the death penalty if you, being the judges of the weight and worth of the evidence, were convinced of the guilt of the defendant and the circumstances warranted such a verdict? Now, do you understand the question?

(No response)

BY THE COURT:

It's a rather detailed question and I want to make sure that each one of you understands the question. I think I'll repeat it to make sure that each one of you understands it. This is directed just to those that said they had conscientious scruples against the infliction of the death penalty. Could you follow the testimony and the instructions of the Court and return a verdict of guilty although that verdict could result in the death penalty if you, being the judges of the weight and worth of the evidence, were convinced of the guilt of the defendant and the circumstances warranted such a verdict? Now, I'll take each one of you individually.

\* \* \* \* \*

BY THE COURT:

Ms. Hibler?

BY MS. HIBLER:

I couldn't.

(R. 123-131)

In later voir dire conducted by the defense, Mrs. Hibler was questioned as follows:

BY MR. STANFIELD:

I am sorry. I had it out of order. It's Mrs. Pamela Hibler, is it not?

BY MRS. HIBLER:

Yes.

BY MR. STANFIELD:

Now, I believe you stated that you had religious beliefs, didn't you?

BY MRS. HIBLER:

Yes, sir.

BY MR. STANFIELD:

And I believe you stated this morning, you said: "I don't think I could be a juror". Is that what I understood you to say?

BY MRS. HIBLER:

I didn't understand you.

BY MR. STANFIELD:

Did you say this morning to Mr. Peters: "I don't think I could be a juror"?

BY MRS. HIBLER:

Yes.

BY MR. STANFIELD:

Could you, Mrs. Hibler, if you were stated as a juror in this case, would you do your best to set aside your personal feelings and, after hearing all the evidence, that is, the sworn evidence that comes from the witness stand, and the instructions of law which His Honor will give to you at the conclusion of the case and on that, in an effort to follow your duty as a juror, would you fairly consider all of the penalties which the law has provided?

BY MRS. HIBLER:

Yes.

BY MR. STANFIELD:

And you say yes?

BY MRS. HIBLER:

Yes.

BY MR. STANFIELD:

All right. Thank you, Mrs. Hibler.

(R. 303, 304)

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The federal constitutional question presented in this petition was raised at trial, was contained in petitioner's Assignment of Errors to the Supreme Court of Mississippi, was briefed in the Supreme Court of Mississippi, and was explicitly entertained and rejected in the opinion of the Supreme Court of Mississippi.

#### REASONS FOR GRANTING THE WRIT

Certiorari should be granted so that the Court can explore the full significance of ambiguous and contradictory answers given by a prospective juror in a death case in the course of voir dire relating to death penalty scruples. That exploration will provide the vehicle for instructing trial judges about their duty to make precise inquiry when a prospective juror's answers leave her qualifications up in the air on the question of conscientious scruples relating to the death penalty.

Here, Ms. Hibler, in response to the judge's question to the jurors whether any of them "have any conscientious scruples against the death penalty when the law authorizes it in proper cases and where the testimony warrants it," replied "I just don't



think I could be a juror to decide on a person." She added, "I have conscientious scruples and religious beliefs also," just echoing the judge's weak effort at clarification. He then asked

Could you follow the testimony and the instructions of the Court and return a verdict of guilty although that verdict could result in the death penalty if you, being the judge of the weight and worth of the evidence, were convinced of the guilt of the defendant and the circumstances warranted such a verdict?...

Ms. Hibler replied, "I couldn't."

However, defense counsel then asked Ms. Hibler directly

Could you, Mrs. Hibler, if you were stated as a juror in this case, would you do your best to set aside your personal feelings and, after hearing all the evidence, that is, the sworn evidence that comes from the witness stand, and the instructions of law which His Honor will give to you at the conclusion of the case and on that, in an effort to follow your duty as a juror, would you fairly consider all of the penalties which the law has provided?

She replied, "Yes."

On that record, the Supreme Court of Mississippi held that Ms. Hibler was properly excused since she had "categorically stated that she couldn't follow the testimony and instructions of the court..." (App., infra, p. 3a).. But Ms. Hibler also categorically stated that she "would...fairly consider all of the penalties which the law has provided." Obviously, her answers directly contradict each other, and the trial court was then required to make further inquiry, but it did not. Adams v. Texas, 448 U.S. 38 (1980), made several observations which bear on the problem presented on this record.

The State may insist, however that jurors will consider and decide the facts impartially and conscientiously apply the law as charted by the court. Id. at 45.

...[I]f prospective jurors are barred from jury service because of their views about capital punishment on "any broader basis" than inability to follow the law or abide by their oaths, the death sentence cannot be carried out. Id. at 48.

Exclusion of Ms. Hibler offends both those observations because she did answer in the affirmative the question by defense counsel whether she would "set aside [her] personal feelings" and "fairly consider all of the penalties which the law has provided." An affirmative answer to that question means categorically that Ms. Hibler would not let her scruples interfere with her applying the law.

In light of Ms. Hibler's apparent inconsistent answers, it was error for the trial court to remove her from the jury for cause. It ought to have made further inquiry to clarify her position with some precision. Plenary review by this Court will provide trial courts throughout the nation with clear instructions to eliminate the kind of ambiguity inherent in this record, so that defendants in capital cases are not deprived of the fair juries to which they are entitled.

#### CONCLUSION

For the reasons stated above, certiorari should be granted.

Respectfully submitted,

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August, 1982